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August 18, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 1, 2009

Case Number: TSO-0729

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

I. Background

The individual is employed at a Department of Energy (DOE) facility where her work requires her to have an access authorization. During a background investigation, the local DOE security office discovered some derogatory information that created a security concern. DOE asked the individual to participate in a Personnel Security Interview (PSI) in order to resolve the information. The PSI did not resolve the security concerns.

On February 25, 2009, the local DOE security office (LSO) sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding her eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of potentially

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (l) (hereinafter referred to as Criterion L). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the individual presented her own testimony. The DOE counsel did not present any witnesses. The individual and the DOE submitted a number of written exhibits prior to and during the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly

^{2/} Criterion L relates, in relevant part, to information that a person has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security" 10 C.F.R. § 710.8(l).

consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites one potentially disqualifying criterion as the basis for suspending the individual's security clearance, Criterion L. To support its reliance on Criterion L, the LSO states that the individual has established a pattern of deliberate financial irresponsibility including a demonstrated unwillingness or inability to satisfy debts. A person who carries an excessive amount of debt presents two security concerns, both relating to reliability and trustworthiness. First, a person who shows a pattern of financial irresponsibility may be susceptible to coercion. Second, the strain of severe financial problems could cause a person to act contrary to the best interest of national security. *See Personnel Security Hearing*, Case No. VSO-0296 (2000); *Personnel Security Hearing*, Case No. VSO-0227 (1999). This potential vulnerability to blackmail, exploitation and duress calls into question a person's judgment, reliability, trustworthiness and her ability to protect classified information. *See* Guideline E of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House.

IV. Findings of Fact

The individual has experienced financial difficulties since 2000, owing \$4,000 in delinquent debts. In 2003, the individual had a vehicle repossessed after she was unable to make the monthly payments. DOE Exh. 1. In that same year, she was charged with issuing a bad check for \$74, and as a result of her non-payment, a warrant was issued for her arrest. *Id.* Then, in May 2005, a judgment was filed against the individual for \$1,221 due to non-payment of rent. Since 2005, the individual has acquired over \$22,000 in student loans, using the loans, in part, to purchase a vehicle and to pay an outstanding judgment. *Id.*

Despite being made aware of DOE's security concerns and financial expectations in a letter of interrogatory (LOI) in October 2006, and personnel security interviews (PSIs) in 2007 and 2008, and despite representations that she would pay her debts, the individual has consistently failed to contact creditors and pay her debts as she has assured DOE she would do. *Id.* Additionally, the individual admitted that she failed to contact her creditors because she did not want to think about her debts, which she attributed to laziness. In 2008, despite her numerous delinquent debts, the individual chose to provide over \$1,200 to her mother. She also co-signed a loan application with her spouse for a Harley Davidson motorcycle. The individual acknowledged that she has poor credit and has not taken any steps to remedy the situation. She has admitted that she was irresponsible in her financial management and ignored her debt. *Id.*

V. Hearing Officer Evaluation of the Evidence

The key issue under Criterion L is whether the individual has brought forward sufficient evidence to demonstrate that she is reliable and trustworthy, and that she is no longer subject to pressure,

coercion, exploitation or duress. For the reasons set forth below, I find that the individual has provided sufficient information to resolve the Criterion L concerns at issue.

During the hearing, the individual admitted to a pattern of financial irresponsibility, and cited her lack of attention to, and motivation to pay her debts as the causes for her financial situation. She testified that the majority of her debt was the consequence of a divorce which left her without a job or income. Transcript of Hearing (Tr.) at 20. She testified that both she and her husband were young, 19 and 20 years old respectively, when they got married and that neither one of them had a “clue” about how to maintain or manage finances. *Id.* at 20-21. Although the individual acknowledged that in some cases she and her husband spent above their means, she testified that in some other cases their spending was necessary for the maintenance of their family. *Id.* at 21. She explained that she and her husband had two small children and no health insurance, which meant that frequent doctor’s visits were straight “out-of-pocket” expenses. *Id.* The individual testified that none of her debt has ever been related to drug-use, gambling or borrowing from others. *Id.*

At the hearing, the DOE Counsel and the individual reviewed every page of a recent credit report. The individual testified as well as provided documentary evidence that she has paid all of her outstanding debt and is current on all of her bills and other items listed in her credit report. *See* Individual Exh. C and D. ^{3/} The individual also explained other issues in the Notification Letter regarding her finances. With respect to a 2003 vehicle repossession, the individual testified that she got divorced in 2003 and her husband “decided she would have the truck” even though she had no job or income at the time. *Id.* at 25. The individual further testified that after finding herself about three months behind in payments, she voluntarily called the loan company and asked them to take the vehicle. *Id.* at 26. Although she was offered the option to refinance the vehicle, the individual testified that she told the loan company that there was no way she could afford the monthly note. The loan company subsequently repossessed the vehicle. ^{4/} *Id.*

The individual also addressed a 2003 bad check for \$74 and a 2005 judgment for non-payment of rent. With regard to the bad check, the individual testified that the check was written before she relocated in 2003, that she forgot that she had written the check and the checking account was closed. *Id.* at 27. She further testified that she was unaware that there was a warrant for her arrest until she was questioned about it in 2006 during the application process for her security clearance. *Id.* The individual stated that she immediately remedied the situation by paying the fine. *Id.* at 28. This judgment is no longer on the individual’s credit report. With respect to a 2005 judgment for non-payment of rent, the individual explained that she and her husband gave notice to their

^{3/} With regard to one bill for \$1,017, the individual testified that she has contacted the company. However, the company informed her that they were unable to locate the account in their records despite the individual providing her maiden name, married name and social security number. The individual testified and provided documentary evidence that she is disputing this bill. As of the date of the hearing, the individual has not received any correspondence from the company. *Id.* at 34, Individual’s Exh. C.

^{4/} When questioned about how assets and debts were handled in her 2000 divorce proceeding, the individual stated that both she and her husband, who were unrepresented, were in such a hurry to complete the paperwork, neither one of them paid attention to details. *Id.* at 26-27.

apartment complex that they would be moving and indicated to the apartment management that they were unable to pay the rent owed at the time. *Id.* at 29. The individual further testified that she verbally arranged a time, about two weeks later, when she would come back and discuss how the rent would be paid. According to the individual, by the time she got back to the management office, there was new management and a judgment against her had already been filed in court. *Id.* The individual reiterated that she gave notice to the apartment management and that she was never evicted. *Id.* at 30. She also highlighted in her credit report where the judgment was paid off in October 2008. 5/ See Individual Exh. D.

Finally, the individual, who is remarried now, testified that her attitude regarding her finances has changed, and she is more responsible, mature and committed to managing her money. *Id.* at 50-52. The individual testified that she has a budget and is vigilantly keeping her bills current. Although the individual and her husband have separate accounts, the individual testified that her husband supports her effort to remain fiscally accountable.

After considering all of the evidence before me, I find that the individual has mitigated the security concerns raised by her financial irresponsibility. Guideline F of the Adjudicative Guidelines sets forth six conditions that can mitigate security concerns arising from financial irresponsibility. Two of these conditions are relevant to the present case. First, security concerns caused by failure or inability to meet financial obligations could be mitigated “if the conditions that resulted in the financial problem were largely beyond the individual’s control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances.” See Guideline F ¶ 20(b). Here, a significant portion of the individual’s debt stemmed from her first marriage and subsequent divorce. As stated above, the individual, who was first married at the age of 19, admitted that both she and her husband lacked the skills to manage their finances. As the parents of two young children, and no health insurance, I find that the individual faced some financially challenging circumstances beyond her control, and thus acted responsibly under the circumstances. Second, security concerns arising under Guideline F may also be mitigated if “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” See Guideline F ¶ 20(d). In the present case, the individual presented credible testimony and documentary evidence showing that she had resolved all of her delinquent debt. It was clear from the record that the individual had the cash flow to pay her bills, but lacked the discipline to prioritize these finances. The individual testified that she has

5/ During the course of the hearing, the individual also addressed other items outlined in the Notification Letter regarding her finances. First, the individual acknowledged that she had acquired over \$30,000 in student loans while in college. *Id.* at 30. She testified that it was her understanding that after school bills were paid, the remaining loan could be used for other purposes. *Id.* at 31. The individual further testified that she used \$1,500 of her loan money to purchase a car to get back and forth from school and other loan money to supplement gas and any other bill she had at the time. *Id.* Second, the individual acknowledged that her second husband asked her to co-sign on a loan application for a motorcycle. *Id.* at 31-32. She testified that although she did not believe the loan would get approved, she completely trusted that her husband would pay the bill in a timely fashion. *Id.* The individual further testified that the loan application was ultimately denied and if asked today she would not co-sign for a loan. *Id.* at 33. Third, the individual also acknowledged that she provided her mother with \$1,200 in 2008. She explained that both her mother and her stepfather are disabled and are raising her 15-year old nephew. The individual testified that despite her delinquencies, she made the decision to help her mother who was in financial need and had no other source of income at the time. *Id.* at 46-47.

eliminated unnecessary expenses. Tr. at 40. For example, she stated that she does not like to cook and previously purchased her meals at restaurants. *Id.* According to the individual, she has saved money by eliminating dining-out expenses. She also has no credit cards and is vigilantly following a budget to avoid any financial problems in the future. The individual testified that she now takes her financial responsibilities seriously. Although her deferred student loan payments will not begin until August 2010, about a year from the time of the hearing, the individual testified that she now has about \$500 extra a month to apply to loan repayments. Tr. at 39. This case is easily distinguished from other cases that describe individuals who demonstrate financial irresponsibility by cultivating habits of excessive spending and falling into debt by purchasing frivolous items they cannot afford. *See Personnel Security Hearing*, Case No. TSO-0264 (2007) (individual filed for Chapter 7 bankruptcy in 1990 due to credit card purchases and accumulated additional \$56,000 in consumer debt by 2005); *Personnel Security Hearing*, Case No. TSO-0217 (2007) (individual with two bankruptcy filings and foreclosure admitted living beyond means and continued to purchase luxury items). Here, the individual, although undisciplined about resolving debt despite assurances made to the DOE that she would take care of it, did not purchase frivolous items or make excessive credit card purchases. The individual clearly made poor judgment calls regarding her finances. However, I am convinced by the testimony and demeanor of the individual that she has matured considerably and has a more responsible attitude regarding her finances. Again, the individual has resolved her delinquent debts, follows a budget, and has eliminated unnecessary expenses. I am persuaded by the evidence before me that the individual will remain financially responsible in the future. After considering the “whole person,” I am convinced that the DOE can rely on the individual’s ability to make sound judgment calls regarding the safeguarding of classified information. *See* Adjudicative Guidelines at (2)a. I therefore find that the individual has sufficiently mitigated the LSO’s concerns under Criterion L.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criterion L. I therefore find that restoring the individual’s access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual’s access authorization should be restored. Any party may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: August 18, 2009

